

FILED

May 18, 2010
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS
Nunc Pro Tunc
May 12, 2010

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

DAVID M. CORWIN, M.D.
License No. 25MA04336100

ORDER ACTIVATING
SUSPENSION OF LICENSE

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") on April 27, 2010, upon the Attorney General's filing of a notice of motion to enforce litigant's rights. Therein, the Attorney General sought the entry of an Order activating a previously stayed suspension of the license of respondent David Corwin, M.D. The Attorney General's motion was predicated on claims that Dr. Corwin had treated female patients in his office, in violation of the express terms of an Order filed by the Board on March 15, 2010 requiring that he see, examine or treat female patients only in the presence of a Board approved chaperone.

The motion was considered by the Board on May 12, 2010. Respondent appeared at said hearing, represented by Michael J. Keating, Esq. Deputy Attorney General Carla Silva appeared for complainant Paula Dow, Attorney General of New Jersey. We then entertained oral argument of counsel on the motion, and considered testimony offered by Dr. Corwin.

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Upon review of the record¹, we conclude that cause exists to presently order the activation of the suspension of Dr. Corwin's medical license. There is no factual dispute in this matter. Respondent explicitly agreed, when he appeared before the Board on March 10, 2010, to the entry of a Board Order, including a term that he was only to see, treat or examine female patients in the presence of a Board approved chaperone (P-2). Respondent was sworn, listened while each term of the Order was read into the record, and then acknowledged his understanding of and agreement to the specified terms.²

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Documents moved into evidence and/or considered by the Board are listed in the attached Appendix. With regard to P-6, we order that the identity of all individual patients thereon be protected. The names of any individual patients of Dr. Corwin that appear on P-6 thus should be redacted, and appear by initial only, on any copies of P-6 that may be made part of the public record.

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The Order memorializes that "all findings and conditions set forth herein were placed on the record, and ... respondent, after being sworn, testified that he had considered and understood all of said findings and terms, that he had consulted with his attorney regarding the effect of the Board's entry of this Order, and that he expressly agreed to the Board's entry of an Order including said findings and terms."

The two significant terms, for purposes of this motion, are the following:

2. Pending any further Order of the Board, respondent shall see, examine and/or treat female patients only in the presence of a Board approved chaperone. Respondent shall be required to nominate and secure Board approval for any chaperone(s) within ten days of the date of entry of this Order, and any practice by respondent with female patients thereafter, other than in the presence of a Board approved chaperone(s), shall constitute a violation

Respondent concedes that he continued to treat female patients after the ten day period to secure approval of a Board approved chaperone expired. He states, however, that he did so only if the female patient was seen in a group setting with a "significant other" present. Respondent's counsel argues that respondent did not intend to willfully or deliberately violate the Board's Order, but rather asserts that Dr. Corwin instead interpreted the Board's chaperoning requirement to apply only if he were to treat a female patient in a "one-on-one" setting.

We reject respondent's asserted interpretation as strained, unsupportable and contrary to the express language within the Order. The Board's Order made no distinction between various settings in which female patients might be seen, but instead imposed a blanket requirement that any such visits occur in the presence of a Board approved chaperone. The Order in no way suggests or implies that a "significant other" could substitute for a Board approved chaperone, or that the requirement that a chaperone be present whenever female patients are treated was limited to individual therapy sessions only.

of the terms of this Order.

6. Any violation of any of the terms and conditions of this Order, to include without limitation any practice by respondent with any female patient outside of the presence of a Board approved chaperone, shall be grounds upon which the Board may activate the one year period of suspension that has otherwise been stayed herein.

Indeed, we point out herein that there are obvious reasons why a "significant other" would not be an appropriate substitute for a Board approved chaperone. A "significant other" would not have any reason to know anything about the allegations that led to the entry of the Board's chaperoning requirement. A Board approved chaperone, in contrast, would be fully familiar with the history of this matter, and would be expected to be sensitive and alert to any inappropriate conduct in which Dr. Corwin might engage. Additionally, a chaperone would be expected to be present through the entirety of any treatment session, whereas it is conceivable that a "significant other" in a group context might not be present during an entire session (that is, there may be occasions when the "significant other" is asked to leave the room or otherwise absent).

Our imposition of a chaperone requirement represented an interim measure designed to balance Dr. Corwin's interest in continuing to be able to maintain a full practice, to include all his patients, with our duty to protect the public health, safety and welfare.³ Dr. Corwin's unilateral determination to disregard

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When entering our prior Order, we required that Dr. Corwin secure a psychosexual evaluation at the Joseph J. Peters' Institute within ninety days. We expressly required that the report of that evaluation include a "recommendation addressing whether a continuing need exists for a chaperone to be present when Dr. Corwin treats female patients." We reserved our right to amend or impose additional conditions or limitations on Dr. Corwin's practice following receipt and review of the report, and also stated that Dr. Corwin could seek elimination of the chaperoning

the terms of our Order has stymied and frustrated our effort to assure the safety and well being of his female patients.⁴

Finally, we point out that, even were we to assume for sake of argument that respondent's interpretation of the Order might be entitled to some deference, the manner in which he unilaterally acted was not. Given the express language of the Order that any practice with female patients, other than in the presence of a Board approved chaperone, would constitute a violation of the Order, respondent should have sought and first secured explicit written approval from the Board before continuing to treat any female patient without a chaperone. His failure to have done so reflects a contumacious disregard for the authority of the Board.⁵

requirement "should the report provide a basis for him to seek such relief."

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The Board has not found it necessary to make any findings as to whether Dr. Corwin's claim that he has seen female patients only when accompanied by a "significant other" is truthful, as we instead have concluded that, even accepting that claim, his actions constitute a violation of the terms of our March 15, 2010 Order. We note, however, that Dr. Corwin's appointment book (P-6) often lists individual patients by last name alone, or by last name and first initial (there is only one entry in the appointment book, for April 1, 2010, that lists a patient and a spouse ("1:00 - 1:45, C., R. and spouse"), and there is thus no way that the appointment book alone provides any support for his testimony.

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Respondent has suggested that his letters to the Board dated March 24, 2010 could be read as seeking clarification from the Board on the interpretation of the Order. We reject that

Conclusion

We conclude that respondent plainly violated the requirements of paragraph two of the Board's March 15, 2010 Order by continuing to see, examine and/or treat female patients after the ten day period for him to secure Board approval for a chaperone expired. The Board's Order expressly stated that any violation of the Order, to include the very violation which occurred, "shall be grounds upon which the Board may activate the one year period of suspension that has otherwise been stayed." Based thereon, we presently order that the stay of the suspension of respondent's license is to be rescinded, and the suspension shall instead be activated, and take full force and effect, immediately.

The suspension of Dr. Corwin's license shall continue until a further Order of the Board is entered. We will reconsider whether to allow respondent to resume the practice of medicine during the period of suspension (that is, whether to stay, for a

contention, as the letter simply appears to communicate a decision by Dr. Corwin not to secure a chaperone and not to treat female patients pending further Order of the Board (Dr. Corwin stated that "with respect to the chaperone that will be required, I have decided that I will not see any female patients in my office who are alone for the three month period or until such time as this is approved by the Board.")

Additionally, there is uncontroverted evidence in the record that respondent was contacted by Colleen Callahan-Feldmann on April 14, 2010, and that he was then "informed" "that per the March 15, 2010 Order, he is not to see female patients without a Chaperone." Respondent's manifest disregard for the authority of the Board is evinced by the fact that he continued to see female patients even after his conversation with Ms. Callahan-Feldmann.

second time, the one year suspension of license we previously ordered) and, if so, whether to impose conditions or restrictions on such practice, only upon receipt of, and upon an opportunity to fully review and consider, the previously required report from the Joseph J. Peters' Institute.

Having concluded that basis to activate the suspension of respondent's license exists, and finding that good cause exists for the entry of the within Order,

IT IS on this 18th day of May 2010

ORDERED nunc pro tunc May 12, 2010:

1. The license of respondent David Corwin, M.D. to practice medicine and surgery in the State of New Jersey is hereby suspended, effective immediately. The suspension shall remain active until such time as further Order of the Board may be entered. Respondent shall make appropriate arrangements to transfer care of his patients to other licensed and qualified physicians, in order to ensure continuity of care for all his patients.

2. The Board shall reconsider this matter, and then determine whether cause exists to stay all or any portion of the remainder of the period of suspension and, if so, whether to impose conditions or limitations on continued practice by Dr. Corwin, upon the Board's receipt and review of the report and recommendations of the Joseph J. Peters' Institute. The parties are advised that,

upon the Board's receipt of the report, this matter will be scheduled for reconsideration by the Board, on the papers, at the next regularly scheduled monthly meeting of the Board, provided that the report is received not later than fourteen days before the scheduled date of the meeting.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: Paul T. Jordan, M.D. _{ch}
Paul T. Jordan, M.D.
Board Vice President

APPENDIX

Documents in Evidence

- P-1 Certification of William Roeder, Executive Director of the Board, dated April 27, 2010 (authenticating two letters that were received by the Board from Dr. Corwin, which letters were marked as Exhibits P-3 and P-4, respectively).
- P-2 Order filed by the Board In the Matter of David M. Corwin, M.D., on March 15, 2010.
- P-3 Letter dated March 24, 2010 from David Corwin, M.D., to Peggy Harris, Director, Public Filings, New Jersey Board of Medical Examiners.
- P-4 Letter dated April 14, 2010 from David Corwin, M.D., to Peggy Harris, Director, Public Filings, New Jersey Board of Medical Examiners
- P-5 Certification of Colleen Callahan-Feldmann, Customer Service Representative for the Board, dated April 27, 2010 (certifying to content of telephone conversation between Ms. Callahan-Feldmann and Dr. Corwin on April 14, 2010).
- P-6 "Date Book for dcorwin," for dates between 3/25/10 and 5/8/10 (the book appears to include a log of patient appointments for said dates).

Additionally, when responding to the Attorney General's motion, respondent filed a letter brief and an Affidavit of David Corwin dated May 4, 2010. Although it appears that Dr. Corwin's Affidavit was not formally moved into evidence, the Affidavit was considered, along with the testimony offered, in the Board's deliberations on this matter.